



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Sea Grant College Program
1315 East-West Highway
Silver Spring, Maryland 20910

October 27, 2003

Mr. Bivan Patnaik
c/o Docket Management Facility
(USCG-2003-14273)
Department of Transportation, Rm PL-401
400 Seventh Street SW
Washington, DC 20590-0001

Dear Sir:

NOAA appreciates the opportunity to comment on the Federal Register Notice of proposed rulemaking published July 30, 2003, Vol. 68, No. 146, pp. 44691 – 44696, “Mandatory Ballast Water Management Program for U.S. Waters.” We support the Coast Guard’s proposed rule for mandatory ballast water management (BWM), requiring vessels operating outside the U.S. Exclusive Economic Zone (EEZ) to exchange ballast water no closer than 200 nautical miles from U.S. shores. Ballast water discharge has been a major source of invasive species to U.S. coastal areas and Great Lakes and constitutes a continued threat to coastal ecosystems and fisheries resources.

We provide the following specific comments regarding the Federal Register Notice.

Penalties. The FR Notice states (p. 44693) that failure to employ required BWM practices or to maintain a BWM Plan on board would result in penalties. It is noted under “Related Projects,” (p. 44692) that penalties for non-compliance with mandatory BWM are being considered under other Coast Guard regulatory actions. It would nevertheless be beneficial to include in this rulemaking a discussion of the range of penalties currently being considered for this proposed rule. Also, there is no mention in this FR Notice of penalties resulting from failure to keep required records. Failure to keep these records, including records why a master did not conduct an exchange, should also result in penalties.

Verification. No mention was made in the FR Notice of the means to be used to verify compliance with mandatory BWM practices. This issue needs to be more thoroughly covered. Without reliable means of verification, proper enforcement is virtually impossible, and whether the program is voluntary or mandatory becomes moot. A potential solution to this problem could involve a modified version of the vessel monitoring system (VMS) that is currently used in fisheries enforcement. For example, the system could be modified to allow for monitoring of ballast water pump activity in conjunction with the location of the vessel.

Essential Fish Habitat (EFH) consultation. The Magnuson-Stevens Fishery Conservation and Management Act mandates that federal agencies consult with the Secretary of Commerce

(NOAA Fisheries) when a federal action may adversely affect Essential Fish Habitat (EFH) (see 16 U.S.C. 1855(b)(2) and 50 CFR 600.920).

The Coast Guard describes (p. 44696) the draft Programmatic Environmental Assessment (PEA) being prepared. After reviewing the PEA, it is unclear whether the Coast Guard has made an initial EFH adverse effect determination. As such, NOAA Fisheries recommends the Coast Guard include this determination in the PEA so an EFH consultation can be initiated if necessary. An appropriate place within the PEA to include this information would be under the “Environmental Consequences” section of the PEA and, more specifically, within the section discussing impacts to biological resources (section 4.1). An additional reference to the MSA and the EFH requirements and determination would also be appropriate under the “Identified Environmental, Review and Consultation Requirement” section (section 5.0).

The Coast Guard should consider any adverse impacts on EFH in coastal areas that will result from ballast water discharges that take place after the mandatory mid-ocean exchanges. While the ballast water exchanges that occur beyond 200 nautical miles are not within EFH, the Coast Guard should explore the potential risk involved in the discharge of mid-ocean water into coastal EFH. This analysis would likely include a discussion of how ballast water discharges will affect biological communities around commonly used inshore discharge areas.

The previous rule included a provision for exchanging ballast water only in waters of 2000 meters depth or more. This provision provides an additional safeguard of preventing the introduction of invasive species and possible damage to EFH. We recognize that other factors (e.g., logistic, economic, other countries’ regulations) enter into consideration with regard to water depth for ballast water exchange; however, removing the 2000-meter depth rule should be done with caution and more deliberation with regard to EFH concerns.

Endangered Species Act consultation. During the past several months, our Office of Protected Resources has been working closely with the U.S. Coast Guard, in conjunction with the U.S. Fish and Wildlife Service, on their draft PEA for the proposed rule. The focus of our review and comments reflects concern for species listed under the Endangered Species Act and critical habitats designated for them. The following comments reflect these discussions.

During the review, we acknowledged that the proposed rule could reduce the risk of introductions of nonindigenous species, possibly preventing effects to listed marine species that could arise from the invasion of the nonindigenous species. There may also be other incidental environmental effects from the options in the proposed rule that may affect listed species. We discussed the potential environmental effects of each of the options.

The mid-ocean ballast water exchange component would result in thousands of exchanges annually (Coast Guard estimates 11,500) of ballast water prior a ship entering the exclusive economic zone (EEZ). Ballast water exchange alters the physical, chemical, and biological components of the marine environment (open ocean) as waters from a port would be exchanged

for water in the mid-ocean. Endangered and threatened species, such as humpback whale, fin whale, sei whale, sperm whale, blue whale, leatherback sea turtle, loggerhead sea turtle, green sea turtle, olive ridley sea turtle, Kemp's ridley sea turtle, and hawksbill sea turtle occupy waters outside of the EEZ where ballast water exchange may occur. To prevent these species from being adversely affected by the water exchanges, the ship operators should avoid areas where these and other listed species are present. We recommend that the Coast Guard specify in the rule that ships planning to conduct ballast water exchange outside of the EEZ avoid areas where aggregations of large whales are visible. We also recommend that convergence zones (indicated by floating biotic or abiotic debris) and boundaries of major currents be avoided to prevent the impingement of adult and juvenile sea turtles on water intake structures. Sea turtles are known to occur in these zones and fronts. Our Office of Protected Resources can work with the Coast Guard in identifying the specific geographic areas that should be avoided.

The retention of ballast water on board the vessel should not have any environmental effects. As for the discharge of ballast water to a reception facility and use of an alternative environmentally sound method of ballast water management, the Coast Guard has not yet identified the reception facilities nor alternative methods approved for ballast water management. For these two options, the environmental effects from these options are not known because locations of facilities and alternative methods have yet to be identified and approved. Thus, the environmental effects of these methods cannot be fully assessed during the Endangered Species Act section 7 consultation on the proposed rule. We anticipate that approval of any reception facilities or alternative methods will require a full analysis of the environmental effects and further compliance with the Endangered Species Act, National Environmental Policy Act, Coastal Zone Management Act, Magnuson-Stevens Fishery Conservation and Management Act, and other statutes. We recommend that the Coast Guard specify in the rulemaking the limitations of the analysis for these components in the environmental assessment and their plans to initiate section 7 consultation when considering approval of reception facilities and alternative methods.

Compliance costs. Page 44694 states that "annual costs (for ballast water exchange) totaled approximately \$15.8 million," and that about 7,420 vessels will be affected. The estimate or method of calculation for these figures is not being questioned, but it may be instructive to explain how these costs to the shipping industry are incurred.

Ships operating at less than 200 miles. We have concerns about the exemption for vessels operating within the EEZ or less than 200 nautical miles of the U.S. coast because these trips may have a relatively high potential for successful species introductions. For example, one location may contain pests or parasites that could devastate commercial fishery industries if introduced in another ecosystem (e.g., from Chesapeake Bay to Apalachicola Bay, F.L.). The possibility that complete or even partial ballast water exchanges within 200 nautical miles could reduce the potential for species invasions should be carefully considered.

Alternative technologies. More importantly, environmentally safe alternatives to exchange that can kill, remove or inactivate organisms in ballast water need to be developed and approved as

soon as possible, and once available, these methods should be mandated for ships operating inside the EEZ or within 200 nautical miles of the U.S. coast, or in other circumstances where exchange is infeasible. Although mandatory ballast water exchange is a great improvement over voluntary compliance, we encourage the Coast Guard to actively pursue implementation of mandatory use of environmentally sound methods of BWM that are shown to eliminate most or all organisms residing in ballast water before discharge. Technologies to reduce and or kill entrained ballast water organisms should reduce the potential for introduction of invasive species beyond that achieved by ballast water exchange alone, and should be a priority.

Treatment standards. Ongoing or planned studies of treatment technologies may identify suitable methods that will meet the standards now being developed by the Coast Guard. Technology development will occur even faster once these standards are set and developers have a target to shoot for. Setting of ballast water treatment standards should therefore also be a Coast Guard priority.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dorn Carlson', with a stylized, cursive script.

Dorn Carlson
manager, Invasive Species Program